

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

IN RE: CIRCUIT CITY STORES, INC.,	)	Case No. 08-35653 (KRH)
	)	Chapter 11
	)	
	)	
PREMIER CONTRACTING, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Contested Matter No. _____
	)	
CIRCUIT CITY STORES, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF AND MOTION FOR RELIEF FROM AUTOMATIC STAY**

Premier Contracting, Inc. ("Premier") has filed papers with the Court to seek relief from the automatic stay (the "Motion").

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the Court to grant the relief sought in this Motion, or if you want the Court to consider your views on the Motion, then on or before **August 25, 2009**, you must file a written response explaining your position with the Court at the following address:

William C. Redden, Clerk  
U.S. Bankruptcy Court  
Eastern District of Virginia  
Richmond Division  
701 E. Broad Street, Suite 4000  
Richmond, Virginia 23219

---

William A. Gray, Esquire – VSB #46911  
C. Thomas Ebel, Esquire – VSB #18637  
W. Ashley Burgess – VSB # 67998  
Sands, Anderson, Marks & Miller, P.C.  
801 East Main Street, Suite 1800  
(Post Office Box 1998)  
Richmond, Virginia 23219 (23218-1998)  
(804) 648-1636 (Telephone)  
(804) 783-7291 (Facsimile)  
wgray@sandsanderson.com  
tebel@sandsanderson.com  
*Counsel for Premier Contracting, Inc.*

If you mail your request or response to the Court for filing, you should mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to:

William A. Gray, Esquire  
Sands Anderson Marks & Miller, P.C.  
801 East Main Street, Suite 1800  
Post Office Box 1998  
Richmond, VA 23218-1998

You must attend the Preliminary Hearing scheduled to be held on **August 27, 2009, at 11:00 a.m.**, in Courtroom 5000, United States Bankruptcy Court, U.S. Courthouse, 701 E. Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

### **MOTION FOR RELIEF FROM AUTOMATIC STAY**

Premier submits the following Motion for Relief from Automatic Stay, requesting the Court permit Premier to pursue certain Litigation (as hereinafter defined) in state court of Kansas. In support of this Motion, Premier states the following:

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1334. This matter is a “core” proceeding as set forth under 28 U.S.C. § 157.
2. On November 10, 2008 (the “Petition Date”), the Debtors filed its Chapter 11 bankruptcy petition pursuant to Title 11 of the *United States Code*.
3. On or about March 4, 2009, Cleveland Construction, Inc. (“Cleveland”), as general contractor, filed its Motion for Relief from the Automatic Stay (“Cleveland’s Motion”) (Docket No. 2417). In its motion, Cleveland sought permission to enforce its mechanic’s lien relating to real property located at the Merriam Village Shopping Center in Merriam, Kansas (the “Property”). On April 10, 2009, the Court granted Cleveland’s Motion (Docket No. 2986),

allowing Cleveland to enforce its mechanics lien by prosecuting a state court action in the State of Kansas (the "Litigation").

4. Premier, a Kansas corporation, was a subcontractor of Cleveland, and Premier also provided construction goods and services on the Property. Premier has not been paid for those goods and services. As such, on or about December 18, 2008, Premier filed its mechanic's lien in the amount of \$26,975.00, in the Clerk's Office for the District Court of Johnson County, Kansas (the "Mechanic's Lien"). A copy of the Mechanic's Lien is attached hereto and incorporated by this reference as **Exhibit A**.

5. In order to enforce its Mechanic's Lien against the real property, Premier desires to join in the Litigation to be filed by Cleveland. Pursuant to Kansas state law, although Circuit City is not the owner of the Property, Circuit City is a necessary party to such Litigation as Circuit City was the party with whom Cleveland contracted to perform the work.

6. Through such Litigation, Premier would simply join Cleveland in seeking the sale of the Property, which is not an asset of the Debtors' bankruptcy estate. Premier does not herein seek relief to execute upon, or attach, any property of the bankruptcy estate.

7. Upon the filing of this Bankruptcy, Premier was stayed from pursuing such Litigation.

8. The interests of Premier in the above-referenced Litigation are not adequately protected without Premier's participation in the Litigation, thereby constituting cause for granting relief from the automatic stay of 11 U.S.C. § 362(a).

9. Premier requests that the ten-day period or stay under Rule 4001(a)(3) of the *Federal Rules of Bankruptcy Procedure*, during which the stay remains in effect be waived and any Order granting relief become effective immediately upon entry.

WHEREFORE, by reason of the forgoing and arguments at any hearing, Premier Contracting Company, Inc. respectfully requests that this Court enter an Order:

- a. Granting it immediate relief from the automatic stay of 11 U.S.C. § 362(a), to allow Premier to pursue Litigation in the state court of Kansas to enforce its Mechanic's Lien, including the sale of the Property, solely as set forth herein;
- b. Maintaining the automatic stay of 11 U.S.C. § 362(a) in full force and effect except as otherwise requested herein;
- c. Waiving the ten-day period or stay under Rule 4001(a)(3) of the *Federal Rules of Bankruptcy Procedure*, during which the stay remains in effect; or
- d. Otherwise granting it adequate protection, and that it has such other and further relief as the Court may deem appropriate.

**Respectfully submitted,**

**PREMIER CONTRACTING, INC.**

By: /s/ William A. Gray  
William A. Gray, Esquire – VSB #46911  
C. Thomas Ebel, Esquire – VSB #18637  
W. Ashley Burgess – VSB # 67998  
Sands, Anderson, Marks & Miller, P.C.  
801 East Main Street, Suite 1800  
(Post Office Box 1998)  
Richmond, Virginia 23219 (23218-1998)  
(804) 648-1636 (Telephone)  
(804) 783-7291 (Facsimile)  
[wgray@sandsanderson.com](mailto:wgray@sandsanderson.com)  
[tebel@sandsanderson.com](mailto:tebel@sandsanderson.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of and Motion for Relief from Automatic Stay was served by electronic means through the ECF system to all registered parties and was mailed by first class U.S. mail, postage prepaid, this 6th day of August, 2009, to the below service list:

Daniel F. Blanks, Esquire  
Douglas M. Foley, Esquire  
McGuire Woods LLP  
9000 World Trade Center  
101 W. Main Street  
Norfolk, VA 23510  
*Counsel for Debtors*

Dion W. Hayes, Esquire  
James S. Sheerin, Esquire  
Sarah Beckett Boehm, Esquire  
McGuire Woods LLP  
One James Center  
901 E. Cary Street  
Richmond, VA 23219  
*Counsel for Debtors*

Gregg M. Galardi, Esquire  
Skadden Arps Slate Meagher & Flom, LLC  
One Rodney Square  
Post Office Box 636  
Wilmington, Delaware 19899-0636  
*Counsel for Debtors*

Chris L. Dickerson, Esquire  
Skadden Arps Slate Meagher & Flom, LLC  
333 West Wacker Drive  
Chicago, IL 60606  
*Counsel for Debtors*

Robert Van Arsdale, Esquire  
Assistant U.S. Trustee  
Office of the U.S. Trustee  
701 East Broad Street, Suite 4304  
Richmond, VA 23219  
*Office of the U.S. Trustee*

Linda K. Myers, Esquire  
Kirkland & Ellis, LLP  
200 East Randolph Drive  
Chicago, Illinois 60601  
*Special Counsel for Debtors*

Lynn L. Tavenner, Esquire  
Tavenner & Beran, PLC  
20 North Eighth Street, Second Floor  
Richmond, Virginia 23219  
*Counsel for the Official Committee of  
Unsecured Creditors*

Jeffrey N. Pomerantz, Esquire  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Boulevard, 11<sup>th</sup> Floor  
Los Angeles, CA 90067  
*Counsel for the Creditors Committee*

Robert J. Feinstein, Esquire  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 26th Floor  
New York, New York 10017  
*Counsel for the Creditors Committee*

/s/ William A. Gray

**EXHIBIT A**

08ml 883

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1.5

**STATEMENT AND ACCOUNT OF MECHANIC'S LIEN**

**OWNER:** **Coventry II DDR Merriam Village, LLC**  
Tax Department  
3300 Enterprise Parkway  
Beachwood, Ohio 44122

**Kansas Registered Agent:** **The Corporation Company, Inc.**  
515 South Kansas Avenue  
Topeka, Kansas 66603

**GENERAL CONTRACTOR:** **Cleveland Construction, Inc.**  
8620 Tyler Boulevard  
Mentor, Ohio 44060

**Ohio Registered Agent:** **Mark T. Small**  
8620 Tyler Boulevard  
Mentor, Ohio 44060

**SUBCONTRACTOR:** **Premier Contracting, Inc.**  
3940 S. Ferree Street  
Kansas City, Kansas 66103

**Kansas Registered Agent:** **Brown & Dunn, P.C.**  
911 Main Street, Ste. 2300  
Kansas City, Missouri 64105

**LIEN CLAIMANT:** **Premier Contracting, Inc.**  
3940 S. Ferree Street  
Kansas City, Kansas 66103

**Kansas Registered Agent:** **Brown & Dunn, P.C.**  
911 Main Street, Ste. 2300  
Kansas City, Missouri 64105

**PROJECT:** **Circuit City Store #4220**  
6030 Eby Avenue  
Merriam, Kansas

**LEGAL DESCRIPTION:** **See EXHIBIT A at § 1 attached hereto.**

**AMOUNT OF CLAIM:** **\$26,975.00**

**Premier Contracting, Inc.** (hereinafter "Premier"), for the purposes of availing itself of the benefits of the mechanic's lien provided by Kansas statutes, hereby files this Statement and Account of Mechanic's Lien for furnishing labor, materials, and services under an agreement

CLERK OF DISTRICT COURT  
JOHNSON COUNTY, KS

2008 DEC 18 AM 11:20

with **Cleveland Construction, Inc.** (hereinafter "Cleveland"). The labor, materials, and services supplied by Premier to Cleveland were used to make certain improvements to a property located at 6030 Eby Avenue, City of Merriam, County of Johnson, State of Kansas (the "Property"). Specifically, the labor, materials, and services provided by Premier were used by Cleveland in the construction of a project commonly known as Circuit City Store Number 4220 (the "Project"). The correct legal description of the Property is set forth in the Ownership and Encumbrance Report for the Property, which is attached hereto as **EXHIBIT A** and incorporated herein by reference.

Premier supplied the labor, materials, and services to Cleveland for use in making improvements to the Property and Project pursuant to a Subcontract Agreement ("Agreement") between Premier and Cleveland. A copy of the Agreement is attached as **EXHIBIT B**. Each and every item Premier provided to Cleveland pursuant to said Agreement was furnished for use on said Property, Project, appurtenances, and improvements and was actually entered into the construction of said Project, appurtenances, and improvements.

The correct owner of the Property improvements is **Coventry II DDR Merriam Village, LLC** ("Owner"). The Owner owned the Property and Project on the date when Premier contracted to provide the labor, materials, and services, and continued to own the Property and Project for the entire time during which Premier was providing labor, materials, and services for the Property and Project.

An itemized account of the amounts due to Premier for the labor, materials, and services furnished for use in the construction of the Project and improvements to the Property is set forth in **EXHIBIT C** attached hereto. The amounts referenced therein all remain unpaid.

Premier last furnished materials and services on the Project on October 1, 2008. The total amount owed and unpaid to Premier for the above-described labor, materials, and services totals \$26,975.00, plus pre-judgment interest. Said amount is due and owing and remains unpaid despite the fact that Premier has invoiced and billed Cleveland for the same as evidenced by the supporting documentation attached hereto as **EXHIBIT D**.

This Statement and Account of Mechanic's Lien is being filed in order that it may constitute a lien on the above-described Property and Project and the amount claimed in this lien is just, true, reasonable, and proper.

Dated this 16 day of December, 2008.

Respectfully submitted,

**PREMIER CONTRACTING, INC.**

By: 

Michael B. Budenbender, President



**AFFIDAVIT AND VERIFICATION**

STATE OF KANSAS                     )  
  ) ss:  
COUNTY OF WYANDOTTE         )

I, Michael B. Budenbender, of lawful age, being first duly sworn upon my oath, hereby attest that I am the President of Premier Contracting, Inc., a Kansas Corporation, active and in good standing and registered to do business in the State of Missouri; that I am duly authorized and empowered by Premier Contracting, Inc. to make this Affidavit and Verification on its behalf and to execute the foregoing Statement and Account of Mechanic's Lien for and on behalf of Premier; that I have read and have personal knowledge of the facts and matters set forth in the foregoing Statement and Account of Mechanic's Lien and accompanying Exhibits; that I have personal knowledge that Premier furnished the labor, materials, and services for the Property and Project as described therein under an agreement with Cleveland Construction, Inc.; that the labor, materials, and services enhanced the Property to the Owner's benefit; that I have personal charge, custody, and supervision of the Agreement and records of Premier, which are referenced herein; that I have personal knowledge that the amount of Premier's account set forth in the foregoing Statement and Account of Mechanic's Lien and accompanying Exhibits is just, true, and correct; that the claim amount of \$26,975.00, plus interest, is just, true, and correctly states the amount that is presently due, owing, and unpaid to Premier for the items described herein; and that I make this Verification as my free act and deed and as the free act and deed of Premier Contracting, Inc. for the purposes set forth herein.

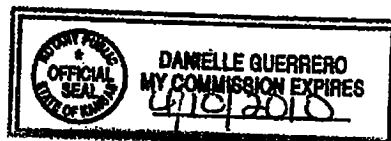
  
Michael B. Budenbender, President  
Premier Contracting, Inc.

On this 10 day of December, 2008, before me, Danielle Guerrero a notary public in and for the State of Kansas, personally appeared Michael B. Budenbender, who is the President of Premier Contracting, Inc., a Kansas corporation, who is also known to me to be the person who executed to foregoing Verification on behalf of said corporation, and who acknowledged the same for the purposes stated therein.

WITNESS my hand and notarial seal subscribed and affixed in said County and State the day and year above written.

  
Notary Public

My Commission Expires:





## OWNERSHIP AND ENCUMBRANCE REPORT

(JOHNSON COUNTY PROPERTY)

SERVICE FEE: \$300.00

THIS IS NOT A COMMITMENT TO ISSUE TITLE INSURANCE, NOR IS THIS A TITLE INSURANCE POLICY. LIABILITY OF THE COMPANY UNDER THIS REPORT IS LIMITED TO THE SERVICE FEE PAID FOR IT.

OLD REPUBLIC TITLE COMPANY OF KANSAS CITY, INC. in preparing this Report has not searched or examined all documents or court proceedings affecting title to the subject property from the date of the government patent to the present, and the Company is rendering no opinion as to the actual ownership or status of title. This Report includes only the matters designated in the numbered paragraphs below. Excluded, without limitation, are any matters with respect to probate section proceedings and any liens that may exist in connection with any owners or parties other than those set forth at paragraph number 2 below.

OLD REPUBLIC TITLE COMPANY OF KANSAS CITY, INC., unless otherwise noted, has reviewed the Treasurer's real property tax records, the records in the office of the Register of Deeds of the County wherein the property hereafter described is located through and including November 11, 2008 at 5:00 P.M., and the records in the office of the Clerk of the District Court of said county through and including November 11, 2008 at 5:00 P.M., and hereby reports the following:

1. **LEGAL DESCRIPTION:** The legal description set forth in the last instrument filed in the Recorder's Office is as follows:

Part of Lot 2 and all of Lot 3, MERRIAM VILLAGE, a subdivision in the City of Merriam, Johnson County, Kansas, all being described as follows: Beginning at the Northwest corner of said Lot 3; thence North 87 degrees 20 minutes 49 seconds East along the North line of said Lot 3, 9.28 feet; thence South 82 degrees 43 minutes 59 seconds East along said North line, 35.54 feet; thence North 85 degrees 43 minutes 48 seconds East along said North line, 114.30 feet; thence South 48 degrees, 32 minutes 06 seconds East along said North line, 20.92 feet; thence South 2 degrees 47 minutes 22 seconds East along the East line of said Lot 3, 78.18 feet; thence Southerly along said East line, on a curve to the left with a radius of 415.00 feet and tangent to the last described course, 262.60 feet; thence South 39 degrees 02 minutes 42 seconds East along said East line, 115.10 feet to the Southeast corner of said Lot 3, said corner also being the Northeast corner of said Lot 2; thence continuing South 39 degrees 02 minutes 42 seconds East along the East line of said Lot

2, 69.05 feet; thence Southerly along said East line on a curve to the right with a radius of 365.53 feet and tangent to the last described course, 235.05 feet; thence South 2 degrees 12 minutes 08 seconds East along said East line, 209.97 feet; thence Southerly along said East line, on a curve to the right with a radius of 320.00 feet and tangent to the last described course, 107.95 feet; thence Southerly along said East line, on a curve to the left with a radius of 330.00 feet and tangent to the last described course, 225.73 feet; thence Southerly along said East line, on a curve to the right with a radius of 320.00 feet and tangent to the last described course, 111.71 feet; thence South 2 degrees 03 minutes 56 seconds East along said East line, 81.93 feet; thence south 87 degrees 31 minutes 25 seconds West along the South line of said Lot 2, 200.74 feet; thence South 2 degrees 04 minutes 58 seconds East along the East line of said Lot 2, 245.11 feet; thence South 87 degrees 31 minutes 25 seconds West along the South line of said Lot 2, 20.00 feet; thence South 2 degrees 24 minutes 53 seconds East along the East line of said Lot 2, 60.00 feet; thence South 87 degrees 31 minutes 25 seconds West along the South line of said Lot 2, 181.21 feet; thence North 2 degrees 47 minutes 22 seconds West along a line that is 355 feet Easterly of and parallel with the West line of said Lot 2, 366.01 feet; thence South 87 degrees 31 minutes 25 seconds West along a line that is 366 feet Northerly of and parallel with the South line of said Lot 2, 350.62 feet to a point on the West line of said Lot 2; thence Northerly along said West line, on a curve to the right with a radius of 92.00 feet and an initial tangent bearing of North 14 degrees 57 minutes 55 seconds East, 18.75 feet; thence North 26 degrees 38 minutes 22 seconds East along said West line, 38.17 feet; thence Northerly along said West line on a curve to the left with a radius of 83.00 feet and tangent to the last described course, 42.39 feet; thence North 2 degrees 37 minutes 31 seconds West along said West line, 67.05 feet; thence North 2 degrees 06 minutes 00 seconds West along said West line, 62.08 feet; thence North 6 degrees 56 minutes 00 seconds East along said West line, 308.56 feet; thence Northerly along said West line, on a curve to the right with a radius of 517.00 feet and tangent to the last described course, 115.28 feet; thence North 19 degrees 42 minutes 33 seconds East along said West line, 330.68 feet to the Northwest corner of said Lot 2, said corner also being the Southwest corner of said Lot 3; thence continuing North 19 degrees 42 minutes 33 seconds East along the West line of said Lot 3, 146.42 feet; thence north 2 degrees 06 minutes 00 seconds West along said West line, 298.14 feet to the Point of Beginning, said property now being platted as part of Lots 9 and 10, and all of Lot 11, MERRIAM VILLAGE SECONDS PLAT, a subdivision in the City of Merriam, Johnson County, Kansas.

NOTE: The above description (in part) was taken from the Memorandum of Lease recorded under Document No. 20071030-0008433.

2. LAST NAMED GRANTEE(S): The Grantee(s) named in the last instrument filed in the Recorder's Office which purports to evidence a transfer of an interest in the above property as follows:

Coventry II DDR Merriam Village, LLC, a Delaware limited liability company

3. REAL PROPERTY TAXES: The Treasurer's real property tax records disclose the following tax liens:

The lien of general taxes for 2008 which are now due and payable in the amount of \$57,688.43. (Part of Lot 10)

The lien of general taxes for 2008 which are now due and payable in the amount of \$5,617.48. (Part of Lot 11)

Portions of Lots 10 and 11, lying outside the TIF District, were shown as exempt for 2008 General taxes.

The lien of general taxes for 2008 which are now due and payable in the amount of \$27,854.55. (Lot 9)

The premises are within the following special tax district(s): (Part of Lot 10)

(WASTEWTR CAP) The 2008 assessment was \$1,325.00.

NOTE: The above assessment(s) is/are included in the general tax bill.

The premises are within the following special tax district(s): (Part of Lot 11)

(WASTEWTR CAP) The 2008 assessment was \$875.00.

NOTE: The above assessment(s) is/are included in the general tax bill.

The premises are within the following special tax district(s): (Lot 9)

WASTEWTR CAP The 2008 assessment was \$1,612.50.

NOTE: The above assessment(s) is/are included in the general tax bill.

NOTE: FOR YOUR INFORMATION: (Lot 10)

Tax Reference #: JP51500000 0010

Tax Reference #: JP51500000 0010A

NOTE: FOR YOUR INFORMATION: (Lot 11)

Tax Reference #: JP51500000 0011

Tax Reference #: JP51500000 0011A

NOTE: FOR YOUR INFORMATION: (Lot 9)

Tax Reference #: JP51500000 0009

4. MORTGAGES: The unreleased Mortgages and other related loan documents which appear in the Register's records from the last named Grantee(s) shown at paragraph 2 above through the date specified above are as follows:

Mortgage and Security Agreement, dated as of June 20, 2005, executed by Coventry II DER Merriam Village LLC, a Delaware limited liability company, to Compass Bank, an Alabama banking corporation, filed for record July 5, 2005, under Document No. 20050705-0001238 in Book 200507 at Page 001238, given to secure an indebtedness of \$36,635,000.00 and any other amounts payable under the terms thereof. (Includes other property)

Assignment of Rents and Leases dated June 20, 2005, executed by Coventry II DDR Merriam Village LLC, a Delaware limited liability company to Compass Bank, an Alabama banking corporation, filed July 5, 2005, under Document

No.20050705-0001239, in Book 200507 at Page 001239, given as additional security for the indebtedness described in the above Mortgage.

First Modification Agreement, dated as of September 21, 2005, filed under Document No. 20050921-0008134 in Book 200509 at Page 008134, modifying the terms of the above indebtedness and/or the Mortgage and Security Agreement, and the Assignment of Rents and Leases, as therein provided.

Second Modification Agreement, dated as of May 11, 2006, filed under Document No. 20060511-0004502 in Book 200605 at Page 004502, modifying the terms of the above indebtedness and/or the Mortgage and Security Agreement, and the Assignment of Rents and Leases, as therein provided.

5. JUDGMENTS AND OTHER LIENS: In connection with the party(s) set forth at paragraph 2 above, the records of the Recorder and the Clerk of the Circuit Court through the respective dates specified above disclose the following:

(a) JUDGMENTS:  
NONE

(b) MECHANIC'S LIENS:  
Notice of Intent to Perform, number 08ML00757, filed on November 14, 2008, by The Skilled Traders Company, giving public notice that said party is a supplier, subcontractor or contractor who has supplied materials or labor for improvements to the premises in question.

(c) TAX LIENS:  
NONE

6. FEDERAL COURT JUDGMENTS AND BANKRUPTCY: In connection with the party(s) set forth at paragraph 2 above, the Company has reviewed the records of the Clerk of the Federal District Court, including bankruptcy through and including November 11, 2008 at 5:00 P.M., and the records disclose the following:

(a) JUDGMENTS:  
NONE

(b) BANKRUPTCY:  
NONE

RECORDED LEASE(S) AND/OR MEMORANDUM(S) OF LEASE:

Terms and provisions of unrecorded lease dated as of August 13, 2007, by and between Coventry II DDR Merriam Village LLC, a Delaware limited liability company, lessor, and Circuit City Stores, Inc., a Virginia corporation, lessee, the existence of which is disclosed by instrument designated "Memorandum of Lease", filed October 30, 2007, under Document No. 20071030-0008433 in Book 200710 at Page 008433.

This Ownership and Encumbrance Report has been issued on this November 26, 2008.

  
Authorized Signature

## **CLEVELAND CONSTRUCTION, INC.**

8620 TYLER BOULEVARD  
MENTOR, OHIO 44060  
PH: (440) 255-8000  
ACCT. FAX (440) 255-7443  
CONST. FAX (440) 205-1138

February 5, 2009

**Sent via facsimile (913) 677.3939 and UPS Ground Service**

Subcontractor  
Premier Contracting, Inc.  
3940 S. Ferree Street  
Kansas City, KS 66103  
913.677.4700  
Fax: 913.677.3939

Attn: Matt Small

Re: *Circuit City Project - Merriam, Kansas*

Dear Mr. Small:

As you may be aware, Circuit City has filed for bankruptcy. This bankruptcy has negatively affected Cleveland Construction, Inc. (CCI) as well as many of its subcontractors, including your company. In an attempt to collect the money owed on the project, CCI has filed a proof of claim with the bankruptcy court in Virginia. Furthermore, CCI has filed a mechanic's lien in Johnson County, Kansas against the Project. Included within both claims is the balance of your contract funds. The intent of advising you of these actions is so that you are aware that CCI is working diligently to collect the amounts that are due from the owner.

CCI has retained local counsel, Mr. William J. DeBauche with the law firm Brown & Dunn. Mr. DeBauche is working with CCI's in house legal counsels, Mr. James Ludwig and Mr. David Honig, who are located in Mason, Ohio, to foreclose on the lien.

While this is not intended to list all the defenses that CCI may have to your request for payment, we would like to direct your attention to Article 17(e) of the Subcontract Agreement, wherein it states:

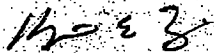
**It is specifically agreed and understood that payment to the Subcontractor of any amount is dependent, as a condition precedent, upon CCI receiving payment, including retainer, from the Owner, for any such progress payment. It is further agreed and understood that the Subcontractor assumes the risk of Owner's creditworthiness and/or insolvency.**

## CLEVELAND CONSTRUCTION, INC.

Please rest assured that CCI is attempting to obtain collection of behalf of the contractors who worked on this project and have outstanding balances. If CCI is successful in its collection efforts, CCI will pay your company as required by the Subcontract Agreement.

Also note that while CCI is leading these collection efforts, there may come a time when CCI requests additional information and/or cooperation from you. In the mean time, please feel free to contact me or Mark Small to address any of your concerns. Mark can be reached at (239) 649.4455.

Sincerely,  
Cleveland Construction, Inc.



Keith E. Ziegler  
Vice President - Construction

c: file  
Mark Small, CCI  
James Ludwig, CCI  
David Honig, CCI  
Randy Stoops, CCI





Cleveland Construction, Inc.  
8620 Tyler Blvd.  
Mentor, OH 44060  
Ph: (440) 255-8000  
Fax: (440) 205-1138

## Letter of Transmittal

To: Premier Contracing, Inc.  
3940 S. Ferree Street  
Kansas City, KS 66103  
Ph: 913.677.4700 Fax: 913.677.3939

Transmittal #: 74

Date: 2/6/2009

Job: 08-MERR Circuit City - Merriam, KS

6030 Eby St.

Merriam

KS 66202

Ph:(913)677-6775

Fax:(913)677-6792

Subject: Circuit City

WE ARE SENDING YOU ☐ Attached ☐ Under separate cover via None the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples

☐ Copy of letter ☐ Change order ☐ Specifications ☐ Other

Document Type	Copies	Date	No.	Description
Other	1	2/6/09	1	Cleveland Construction Lien Notification

### THESE ARE TRANSMITTED as checked below:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> For approval           | <input type="checkbox"/> Approved as submitted            | <input type="checkbox"/> Resubmit ___ copies for approval   |
| <input type="checkbox"/> For your use           | <input type="checkbox"/> Approved as noted                | <input type="checkbox"/> Submit ___ copies for distribution |
| <input type="checkbox"/> As requested           | <input type="checkbox"/> Returned for corrections         | <input type="checkbox"/> Return ___ corrected prints        |
| <input type="checkbox"/> For review and comment | <input type="checkbox"/> Other                            |   |
| <input type="checkbox"/> FOR BIDS DUE           | <input type="checkbox"/> PRINTS RETURNED AFTER LOAN TO US |   |

Remarks:

Copy To:

From: Randy Stoops (Cleveland Construction, Inc.)

Signature: \_\_\_\_\_